

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JAMES R. HUSVAR, *et al.*,

Plaintiffs,

-V-

MICHEL RAPOPORT, *et al.*,

Defendants.

Case No. 1:01-CV-430

(Judge Beckwith)

**DEFENDANTS' MOTION TO
VACATE ORDER OF REMAND**

On October 3, 2005, the United States Court of Appeals for the Sixth Circuit issued an Amended Opinion in this case (Appeals Case No. 01-4254) ordering this Court to remand the instant action to state court. *See Amended Order* at p. 5 (attached hereto as Exhibit A); *Sixth Circuit Docket Sheet* at p. 8 (attached hereto as Exhibit B). At that time, however, the Sixth Circuit did not issue the mandate in this case. Defendants enjoyed until October 17, 2005 to complete and file their petition for rehearing and/or to request that the matter be reconsidered *en banc*. *See Sixth Circuit Docket Sheet* at p 8. On October 17, 2005, Appellees did indeed file a memorandum supplementing their petition and, accordingly, requested that the matter be reheard or reconsidered *en banc*.

On October 4, 2005, however – despite the fact that the case was still before the Sixth Circuit, where it currently remains – this Court issued an Order (Doc. No. 41) remanding the instant case to the Butler County Court of Common Pleas and, by letter dated the same day (Doc. No. 42), transmitted this Order to the state court. *See October 4, 2005 Order* (attached hereto as Exhibit C); *October 4, 2005 Letter* (attached hereto as Exhibit D). Despite the fact that this Court lacked jurisdiction to remand the case, it is unlikely that the state court is aware of this

procedural peculiarity. As a result, the state court likely assumes that it enjoys jurisdiction over the instant case at this time and, as a result, believes that applicable timeframes for proceeding in that court – such as filing responsive pleadings – have begun.

Accordingly, Defendants respectfully request that this Court vacate its October 4, 2005 Order remanding the case to the Butler County Court of Common Pleas for lack of jurisdiction. A proposed Order is attached hereto as Exhibit E for the Court's convenience.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **October 19, 2005** I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of such filing to the following:

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